UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte THOMAS ALGIE ABRAMS, JR.

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Appeal 2016-006762
Application 11/688,807
Technology Center 2400

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Before CARLA M. KRIVAK, MICHAEL M. BARRY, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from a Final Rejection of
claims 1–3, 6, 8, 9, 11, 13–18, and 20–25. We have jurisdiction under 35
U.S.C. § 6(b).

We affirm-in-part.

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[1] Appellant identifies the real party in interest as Microsoft Technologies
Licensing, LLC. App. Br. 3.

Introduction

Appellant's claimed invention relates to video processing. Abstract. Appellant states "a need exists for cameras and/or converters for cameras that allow for greater flexibility and control of video output." Spec. 1–2.

Claim 1 is illustrative:

> 1.   A display device for displaying video, the device comprising:
>
> a serial digital interface to receive digital video data;
>
> a video board to convert and output decompressed digital video to the LCD display,[2] wherein converting the decompressed digital video comprises converting decompressed digital video data to a format suitable for use with the LCD display in accordance with one or more control command parameters;
>
> a processor, configured to facilitate processing the digital video data according to the one or more control command parameters;
>
> memory;
>
> browser software for execution in conjunction with the processor and the memory, wherein the browser software provides for operations comprising:
>
> requesting the one or more control command parameters from a controller device configured to communicate compressed digital video data to the display device;
>
> locating, over a network, the controller device configured to communicate compressed digital video data to the display device;
>
> decompression software for execution in conjunction with the processor and the memory to decompress the compressed digital video data received over a network from the controller device located via the browser software;

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[2] The antecedent basis for "the LCD display" appears *infra* in the claim.

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an interface to receive the compressed digital video data and to receive code wherein the code comprises the one or more control command parameters relating to the digital video data;

an Internet protocol address; and

framework capabilities that comprise:

a runtime engine for execution of the code comprising the one or more control command parameters received by the interface;

associated classes organized in class libraries, wherein the classes comprise one or more classes that enable XML data manipulation; and

a LCD display for display of the decompressed digital video data in the format obtained from the conversion.

App. Br. 32 (App'x of Appealed Claims) (underscores in original replaced with spaces).

Rejections

Claims 1–3, 6, 8, 9, 11, 13–18, and 20–25 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Burke (US 6,665,687 B1; Dec. 16, 2003) and Uchida et al. (US 6,930,661 B2; Aug. 16, 2005). Final Act. 2–8.

ISSUES PRESENTED

Based on Appellant's arguments, the issues presented are whether the Examiner errs in rejecting independent claims 1 (App. Br. 11–19[3]) and 20 (*id.* at 20–25) and dependent claim 6 (*id.* at 25–26[4]), and whether there was a violation of the Administrative Procedures Act ("APA") during prosecution prior to this appeal (App. Br. 26–30).

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[3] Appellant argues claim 18, an independent method claim with limitations that correspond to the disputed limitations of claim 1, based solely on the arguments for claim 1.
[4] Appellant argues the other dependent claims 2, 3, 5, 8, 9, 11, 13–17 and 21–25 based solely on dependency from independent claims 1, 18, or 20.

ANALYSIS

Claim 1

In rejecting claim 1, the Examiner finds Burke teaches all limitations except for the requirement that the recited display is an LCD display, which the Examiner finds Burke teaches. *See* Final Act. 2–6. Appellant argues the Examiner errs because

> neither Burke nor Uchida, whether taken alone or in combination, teaches or suggests "browser software [that] provides for operations comprising: requesting one or more control command parameters from a controller device configured to communicate compressed digital video data to the display device; [and] locating, over a network, the controller device configured to communicate compressed digital video data to the display device," as claim 1 recites. . . .

> [T]he Office erroneously cites the same element "controller 30" embedded in the Burke user terminal, as allegedly disclosing the two distinct elements of "the controller device," and "the processor" . . .

App. Br. 12–13 (brackets in quoted claim language in original).

Regarding Appellant's contention of erroneous mapping of Burke's controller to both the recited controller and processor, the Examiner answers by clarifying the rejection maps Burke's controller 30 to the recited controller and maps decoder 17 to the recited processor. Ans. 26; *see also* Final Act. 3 (parenthetically identifying both Burke's controller and decoder for claim 1's processor, stating "the decoder 17 of figure 1 receives the command parameters from the controller 30 of figure 1 to perform the process of decoding the digital video data"). We also note, as discussed

infra, the Examiner additionally and alternatively finds that Burke's server

37 or remote terminal 39 maps to the recited controller.[5]

Regarding the browser software requirements, Appellant specifically

contends that "[t]he Burke controller does not respond to a browser software

request for 'control command parameters,' nor does any other element of

Burke request the 'control command parameters' claim 1 recites." App.

Br. 14. Appellant further contends "Burke does not disclose, teach or

suggest a controller located over a network that is 'configured to

communicate compressed digital video data to the display device'. . . ." *Id.*

Appellant does not persuade us. For our discussion, we refer to

Burke's Figure 1, reproduced here, with annotations added:
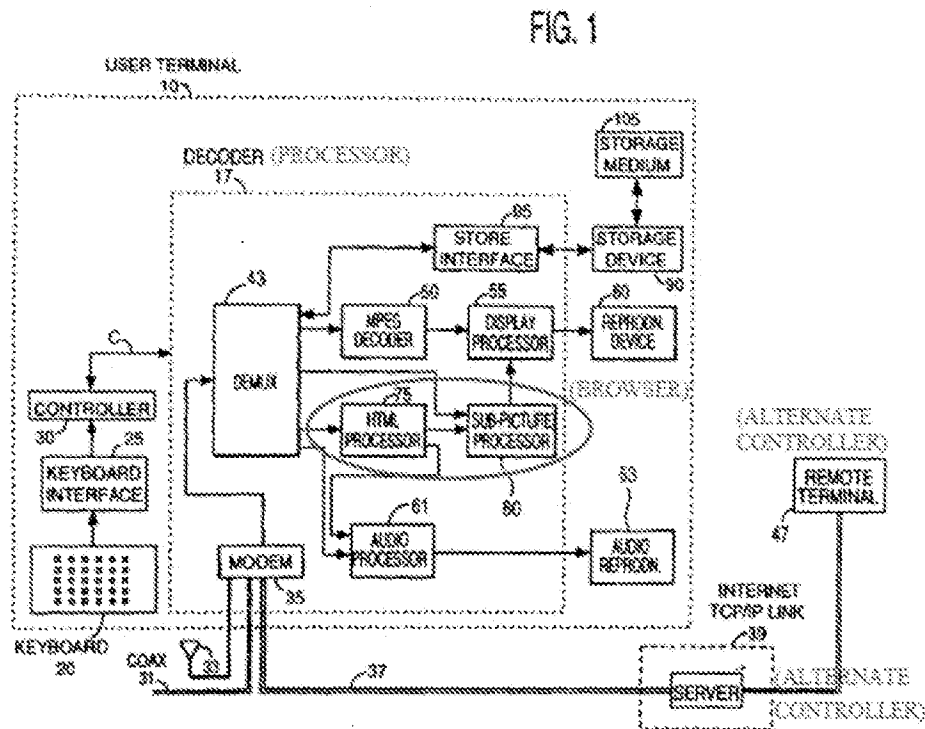
Burke's Fig. 1 shows a user terminal 10 incorporating a multimedia decoder
17 coupled through a server 39 to a remote terminal 47 over a network.

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[5] *See* infra footnote 9.

As the Examiner finds, and we agree, Burke's HTML processor 75 and sub-picture processor 80, along with the related teachings of Burke's Figures 3 and 4, teach browser software for execution in conjunction with the processor (decoder 17), as recited. *See* Final Act. 3–5; Ans. 13–16, 26–31.[6] Specifically, the Examiner finds that Burke teaches retrieval of Web pages and video such as MPEG via controller 30, that alternatively server 39 and remote terminal 47 include controller devices involved in retrieving the Web pages and video from the remote terminal 47, and that such retrieval includes obtaining "command parameters such a motion vector, macroblock header, slice header, [and] start code" information associated with the video. Ans. 27.

We agree with the Examiner that controller requests for MPEG video in a Web page via controller 30 (and/or via a controller in server 39 or remote terminal 47) include requesting command parameters for processing video.[7] Thus, we agree Burke teaches "requesting the one or more control command parameters from a controller device configured to communicate compressed digital video data to the display device," as recited.

Regarding "locating, over a network, the controller device configured to communicate compressed digital video data to the display device," we

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[6] We note the Examiner's Answer also provides new findings for how Uchida teaches aspects of claim 1's browser software, *see* Ans. 16, 34, to which Appellant offers no rebuttal.

[7] We note Appellant's Specification as filed describes exemplary command parameters specifying receiving, converting, structuring, compressing, decompressing, storing and communicating digital video data. *See* Spec. 20: 2–8 *and* claim 1 as filed. We agree with the Examiner that requesting a Web page with MPEG video includes obtaining such parameter information that is necessary for processing the video.

agree with the Examiner that Burke teaches this. Appellant does not define "network" in the Specification in such a way to exclude Burke's controller 30 from being considered located over a network vis-à-vis browser software executed by decoder 17.[8] The Examiner alternatively finds that server 39 and remote terminal 47, which each include a controller, teach "locating, over a network, the controller device." *See* App. Br. 19–21. Appellant does not explain why the Examiner's alternative finding does not show that Burke teaches this requirement. Both server 39 and remote terminal 47 are in the path of communication of Web page and video information from remote terminal 47 to the HTML processor ("browser software") in decoder 17, and both are coupled to user terminal 10 via Internet link 37. Thus, we agree with the Examiner that an ordinarily skilled artisan would understand Burke to teach claim 1's "locating, over a network, the controller device," as recited.

Appellant also argues the Examiner errs in finding Burke's controller 30 teaches the processor of claim 1, further contending that none of the processors described in Burke "work in conjunction with browser software to 'facilitate processing the digital video data according to one or more control command parameters,' which are requested from a controller device by the browser software, as claim 1 recites." App. Br. 16. We find this unpersuasive in view of the Examiner's mapping of decoder 17 to the recited processor which, as discussed *supra*, provides the recited functionality.

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[8] For example, further in support of the Examiner's findings, we note bus connection C is a type of internal network connection within user terminal 10.

Accordingly, we sustain the rejection of claim 1. In doing so, we adopt the relevant findings and reasons of the Examiner from the Final Rejection, as explicated in the Answer. *See* Final Act. 2–6, Ans. 26–35.

Claim 20

Claim 20 recites "[a] computer-readable medi[um]" to perform operations including the following steps:

> requesting one or more control command parameters from a controller device configured to communicate compressed digital video data to the device wherein:

> the requesting is performed via execution of browser software on memory of the display device by one or more processors of the display device,

> wherein the requesting comprises requesting via the browser software over a network, and

> the one or more control command parameters requested relate to digital video data; [and]

> in response to the request, receiving code comprising the one or more control command parameters relating to the digital video data over the network via a network interface from the controller device configured to communicate compressed digital video data located via the browser software[.]

App. Br. 37 (Claims App'x).

The Examiner rejects claim 20 for the same reasons as claim 1. *See* Final Act. 2–6. Appellant argues "[t]he Burke controller does not respond to a browser software request for 'one or more control command parameters,' nor does any other element of Burke request the 'control command parameters,' as claim 20 recites." App. Br. 22. Appellant contends that Burke's controller is "based upon user input[, which] is inapposite to browser software *'requesting one or more control command parameters from the controller device . . . wherein the requesting comprises requesting*

via the browser software over a network.'" *Id.* at 22–23. These arguments are substantially the same as arguments for claim 1, discussed *supra*, and we disagree with them for the same reasons.

Appellant also argues that because "[a]ll elements of the user interface in Burke, from the keyboard and mouse to the controller, are clearly located at the user terminal," Burke fails to teach or suggest claim 20's recited requirement for "in response to the request, *receiving code comprising the one or more control command parameters relating to the digital video data over the network via a network interface from the controller device* configured to communicate compressed digital video data located via the browser software." App. Br. 23–24. We find this unpersuasive because, as discussed *supra*, the Examiner alternatively finds there are controller devices in Burke's server 39 and remote terminal 47, which send control command parameters over a network as necessary for processing video data such as MPEG in Web pages retrieved by HTML processor 75 (browser software).

Appellant further argues the Examiner errs in rejecting claim 20 because the alternative citation to Burke's server 39 or remote terminal 47 for the recited controller device of claim 20 "is erroneous and is evidence in and of itself that the 'controller 30' described in Burke does not teach or suggest at least 'in response to the request, receiving code comprising the one or more control command parameters . . . .'"[9] App. Br. 24–25. This

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[9] We note Appellant similarly argues in the discussion of claim 1, with reference to claim 20, that the Examiner's citation to alternative controllers in server 39 and remote terminal 47 "is *de facto* evidence" that Burke does not teach the "requesting one or more control command parameters limitation" for claim 1. *See* App. Br. 14–15. To the extent Appellant

does not persuade us. As the Examiner finds, and we agree, these alternative controllers send control command parameters, as discussed *supra*, over network link 37 to controller 30 of user terminal 10. *See* Ans. 42–43. The language of claim 20 does not preclude such a bifurcated or composite controller arrangement. Further in support of the Examiner's rejection, we also note either of these alternative controllers from server 39 or remote terminal 47 alone may provide the functionality of the "controller device" recited in claim 20.

Accordingly, we sustain the rejection of claim 20. In doing so, we adopt the relevant findings and reasons of the Examiner from the Final Rejection, as explicated in the Answer. *See* Final Act. 2–6, Ans. 35–44.

Claim 6

Claim 6 recites "[t]he display device of claim 1 wherein the browser software provides for locating a network address of the controller device." App. Br. 34 (Claims App'x). The Examiner finds that a controller obviously has a network address, and gives the examples of www.c.com, www.e.com, A@B.com as network addresses for Burke's remote terminal 47. Final Act. 6–7; *see also* Ans. 44 (reiterating findings from rejection). Appellant argues the Examiner errs by mapping network addresses from a Web browser navigation or search history to the controller device address. App. Br. 26. We agree with Appellant. We also note that while we agree a controller device obviously has an address, by itself this is insufficient to render obvious the recited requirement for browser software to locate the device address. Accordingly, we do not sustain the rejection of claim 6.

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intended that to be a separate argument for claim 1, we find it unpersuasive for the same reasons discussed here for claim 20.

Administrative Procedures Act ("APA")

Appellant argues that, during earlier prosecution, the Examiner engaged in arbitrary and capricious decision making in violation of the APA by suggesting that certain claims would be allowable if the remaining claims were cancelled. Appellant chose not to follow the specific suggestion but instead sought allowance of a larger set of claims that Appellant contends were based on independent claims amended to include the substantive subject matter that had been indicated as allowable. The Examiner proceeded to perform a new search and newly reject all amended claims. *See* App. Br. 27–29. Appellant also argues that because the Pre-Appeal Brief Conference Decision lists the Examiner as the sole attendant of the Pre-Appeal Brief Conference, the conference was apparently conducted in an improper manner in violation of the APA. *Id.* at 29–30.

The Board, however, does not exercise supervisory authority over the examining corps. Appellant's remedy, not elected, was to file a petition to the Director under 37 C.F.R. § 1.181. Regardless, we note the Examiner's Answer persuasively explains why there was no violation of APA in the two issues argued by Appellants. *See* Ans. 8–9, 45.

DECISION

For the above reasons, we affirm the rejection of claims 1–3, 8, 9, 11, 13–18, and 20–25, and we reverse the rejection of claim 6. No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART